

Assembly Bill No. 1867

Passed the Assembly August 19, 2008

Chief Clerk of the Assembly

Passed the Senate August 14, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 11329 to the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 1867, Keene. Real estate appraisers.

Existing law, the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, prohibits the criteria established by the federal financial institutions regulatory agencies, among other organizations, from excluding a certified or licensed appraiser for consideration for an assignment solely by virtue of membership or lack of membership in any appraisal organization.

Existing law, the Real Estate Law, provides for the licensure and regulation of various real estate licensees and makes a knowing or willful violation of the law a crime. Within that law, the Real Estate Appraisers' Licensing and Certification Law provides for the licensure and regulation of real estate appraisers and vests the duty of enforcing and administering that law in the Director of the Office of Real Estate Appraisers.

This bill would provide that when a public agency, including, but not limited to, a city or county, decides that a contract with a designated member of an appraisal organization is necessary to provide an appraisal, as defined, of real property, any designated member of any appraisal organization that is a member of the Appraisal Foundation shall be allowed to submit a proposal if specified criteria are met. The bill would authorize that member to bring a civil action for equitable relief against a public agency that violates this provision, as specified, and would prohibit the office from participating in that action. The bill would prohibit a public agency from requiring the member to waive certain rights, including the right to bring that action, as a condition of submitting a proposal or doing business with the agency. The bill would require that a waiver by a member of the right to file and pursue a civil action be knowing, voluntary, and not made a condition of submitting a proposal or doing business with a public agency, and would, among other things, provide that the public agency has the burden of proving that the waiver meets those conditions. The bill

would also prohibit construing the Real Estate Appraisers' Licensing and Certification Law to require or authorize the office or the director to enforce these provisions and would specify that a violation of these provisions is not a crime.

By requiring a city or county, among others, to allow those specified members to submit a proposal, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 11329 is added to the Business and Professions Code, to read:

11329. (a) Notwithstanding any other provision of law, when a public agency decides that a contract with a designated member of an appraisal organization is necessary to provide an appraisal of real property, any designated member of any appraisal organization that is a member of the Appraisal Foundation shall be allowed to submit a proposal if both of the following requirements are met:

(1) The member has at least five years of experience as a licensed appraiser at a certified level. A member with a license at a certified level issued by another state shall obtain a reciprocal license at a certified level pursuant to the regulations adopted by the director.

(2) The appraisal is performed pursuant to the Uniform Standards of Professional Appraisal Practice.

(b) A designated member of an appraisal organization that is a member of the Appraisal Foundation who meets the requirements of subdivision (a) but is not allowed to submit a proposal in violation of this section may bring a civil action for equitable relief against the public agency that committed the violation. The office

shall not participate in an action brought pursuant to this subdivision.

(c) A public agency shall not require a member to waive the rights provided under this section, or any right or procedure provided for in any other state law regarding the right to file and pursue a civil action, as a condition of submitting a proposal or doing business with the agency. Any waiver by a member of the right to file and pursue a civil action must be knowing, voluntary, and not made a condition of submitting a proposal or doing business with a public agency. Any waiver by a member, including, but not limited to, an agreement to arbitrate a claim, that is required as a condition of submitting a proposal or doing business with a public agency shall be presumed involuntary, unconscionable, against public policy, and unenforceable. The public agency has the burden of proving that any waiver of rights, including any agreement to arbitrate a claim, was knowing, voluntary, and not made a condition of submitting a proposal or doing business with the agency. For purposes of this subdivision, “member” means a designated member of an appraisal organization that is a member of the Appraisal Foundation.

(d) For purposes of this section, the following terms shall have the following meanings:

(1) “Appraisal” means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question.

(2) “Public agency” means the state or any city, county, city and county, district, or other local authority or public body of or within the state.

(e) Nothing in this part shall be construed to authorize or require the office or the director to enforce this section.

(f) Nothing in this section shall be construed to limit the ability of a public agency to award a contract based on appraiser qualifications, which may include particular designations, experience, and other factors deemed necessary to perform an appraisal on a specific assignment.

(g) Notwithstanding Section 10185, a violation of this section shall not be a crime.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2008

Governor